

# General Conditions of Purchase of Hamburger Hafen und Logistik AG

## 1. AREA OF APPLICATION

Unless otherwise agreed in writing, any purchase orders of Hamburger Hafen und Logistik Aktiengesellschaft and its affiliated companies within the meaning of §§ 15 et sequentes AktG / German Stock Corporation Act (hereinafter referred to as the "customer") shall be subject exclusively to these General Conditions of Purchase. Any contrary or additional general terms and conditions of the contractor shall not bind the customer – except for a simple reservation of proprietary rights in favour of the contractor – even if these conditions are not expressly objected to or if the delivery / service is accepted without reservations.

## 2. OFFER / PURCHASE ORDER / WRITTEN FORM

- 2.1. The creation of offers by the contractor shall be free of charge. Cost estimates will only be remunerated following a corresponding written agreement.
- 2.2. Purchase orders and related agreements, changes and terminations shall only be binding in written form.

## 3. SUBCONTRACTORS

The involvement of third parties in the provision of services by the contractor shall only be admissible after prior written consent from the customer. Even in the event of such consent, the contractor shall remain responsible to the customer for provision of the services in proper form.

## 4. SHIPPING

- 4.1. The contractor shall comply with the place of delivery indicated in the purchase order. In addition to the place of delivery, the transport documents shall always refer to the ordering information (purchase order number, ordering date and, where applicable, other information specified in the purchase order). Where subcontractors are used, they shall indicate the contractor as their contracting entity in written correspondence and in the shipping documents including a reference to the ordering information.
- 4.2. The customer shall only be obliged to accept the quantities indicated in the purchase order. Excess deliveries, short deliveries and / or partial deliveries shall only be admissible with explicit consent from the customer.
- 4.3. Shipping shall take place at the contractor's risk, i.e. the contractor shall bear the risk of any deterioration including accidental loss up to the time of delivery or acceptance in the place of delivery indicated in the purchase order.

## 5. DATES / CONTRACTUAL PENALTIES

- 5.1. The periods of delivery / performance mentioned in the purchase order shall be binding.
- 5.2. The contractor shall notify the customer without delay if circumstances occur or become recognisable, as a result of which periods of delivery / performance cannot be complied with. This notification will not change the originally agreed periods of delivery / performance.
- 5.3. Agreed and forfeited contractual penalties may be asserted by the customer until the due date of the final payment without the need of a reservation pursuant to § 341 Subsection 3 BGB (German Civil Code).

## 6. PRICES / INVOICE / PAYMENT

- 6.1. Unless explicitly otherwise agreed in writing, the prices indicated in the purchase order shall be fixed prices carriage free, and include packaging, customs charges and insurances up to the indicated place of delivery or performance. Hourly wage work may only be invoiced if and to such extent as they have been agreed in writing and confirmed in writing by the customer's responsible officer.
- 6.2. Invoices shall comply with the legal requirements, include the customer's purchase order number and must be sent to the invoice address indicated in the purchase order.  
The payment period shall be 30 days and begin upon delivery of the goods at the agreed place of receipt or on acceptance of the service and receipt of an invoice in proper form pursuant to Subsection 6.2. Phrase 1.
- 6.3. Payments of the customer shall be subject to the correctness and completeness of the delivery / service and not imply any approval. As long as deliveries / services carry essential defects or are incorrect or incomplete, the corresponding invoices shall not become due for payment. In the event of minor defects, the customer shall be entitled to retain twice the amount of the anticipated defect remedy costs from due payments until the defect has been remedied successfully.

## 7. PRODUCT INFORMATION / PLANNING DOCUMENTS

- 7.1. The contractor shall make any (product) information, which is required for the possession and utilisation of the delivery and service object, including drawings and other documents, which are required for the installation, operation, maintenance or repair of the delivery object, available to the customer in good time prior to the delivery or service without being requested to do so and without charging any separate costs. All documents must be made available in German. In particular, this shall also cover information on the durability and composition, safety data sheets, labelling regulations, processing indications, assembly instructions and occupation safety measures. In the event of changes, updated product information shall be made available to

the customer without delay and without the need of a request to do so. Safety data sheets and the updates must also be made available as a PDF file and sent to: sdb@hlla.de.

7.2. As far as the contractor creates planning documents, drawings, sketches etc. according to particular information from the customer, they shall pass into the unrestricted ownership of the customer without additional remuneration and regardless of whether they remain in the contractor's possession.

## **8. HAZARDOUS MATERIALS / WASTE DISPOSAL / ACCESS TO THE OPERATING SITES OF THE CUSTOMER / AUTHORITY TO GIVE DIRECTIVES**

8.1. Delivery objects shall be marked according to the Hazardous Materials Regulation and the relevant EU directives for hazardous materials / preparations.

8.2. Where waste within the meaning of waste law arises during deliveries / services of the contractor, the contractor shall utilise or remove such waste at his own expense in compliance with the regulations of waste law. The ownership, the risk and the responsibility under waste law shall pass to the contractor immediately at the time when the respective waste comes into being.

8.3. When entering or using vehicles on the operating sites of the customer, the contractor shall adhere to the directives given by the qualified personnel of the customer. Apart from that, the contractor shall inform himself of the regulations applicable at the respective site, especially the safety regulations and the so-called "Outside Company Regulations", and comply with these regulations. In this context, especially the directives from the coordinator within the meaning of § 6 Subsection 1 DGUV (German Social Accident Insurance) Regulations shall be adhered to. The contractor shall inform his employees of the fact that the instructions from the coordinator must be followed.

## **9. ACCEPTANCE / CERTIFICATES OF PERFORMANCE**

Certificates of performance and acceptances shall be provided and recorded in writing by the contractor free of charge. They shall require the countersignature or confirmation by the customer.

## **10. LIABILITY / DEFECT REMEDY**

10.1. In general, the liability of the customer and the contractor is aligned to the statutory provisions. Warranty claims or claims for non-performance and their period of limitation shall, however, be subject to the statutory provisions with the following specific stipulations.

10.2. The contractor warrants in particular (i) that his deliveries and services will be in line with the guaranteed characteristics and (ii) be of the quality agreed in the purchase order and (iii) will be suitable for the kind of use assumed in the purchase order and (iv) will not be impaired in terms of their value and suitability and (v) will comply with the generally accepted standards of technology, (vi) possible manufacturer's indications and (vii) the current provisions issued by public authorities and employer's liability insurance associations as well as with the current statutory regulations. The warranted general standard of technology shall cover compliance with the relevant DIN standards and corresponding international and European standards (e.g. DIN ISO, DIN EN) as a minimum standard. In particular, IT deliveries and IT services shall be provided in such a way that they do not conflict with the customer's adherence to DIN ISO/IEC 27001 and 27002.

10.3. The sole responsibility of the contractor for the freedom of defects of the delivery / service shall not be restricted through possible approvals of documents by public authorities or as a result of the customer's provision or approval of drawings, calculations and other technical documents. The same shall apply to possible directions, proposals and recommendations issued by the customer unless the contractor raises written objections to such directions, proposals and recommendations including the indication of comprehensible reasons.

10.4. If the contractor's delivery / service is faulty or defective, the contractor shall be entitled and under obligation, in particular, to remedy the defects and faults by means of subsequent improvement without delay and free of charge for the customer and to reimburse any expenses to the customer, which the customer incurs on the occasion of the subsequent performance.

10.5. The customer will notify the contractor of obvious defects in writing without delay as soon as they are identified according to the standards of an orderly course of business. In any event, the notification shall be considered to have been given without delay if it is given within two weeks after receipt of the delivery. The customer will report any defects identifiable at a later time within two weeks after the respective defect has come to his knowledge.

10.6. From the day of receipt of the defect notification, the progression of the warranty period shall be suspended. The suspension shall end upon the complete remedy of the notified defect or, if the contractor refuses to remedy the defect, 3 months after receipt of the letter, by which the remedy of the defect is refused. For deliveries or services, where new delivery, replacement or subsequent improvement has been performed in whole or in part, the warranty period shall start anew, whereby the warranty period will be extended to a maximum of twice the original warranty period.

10.7. As far as the contractor does not remedy faults or defects within an appropriate period time despite providing two notices of defect and the setting of a deadline by the customer, the customer shall be entitled, without the need of a further threat and the setting of a period of grace, to perform the fault or defect remedy himself or to have it performed by a third party at the expense of the contractor (right to provide remedy oneself). The warranty obligations of the contractor shall remain unaffected by the exercise of the customer's right to provide remedy himself. Without a notice of defects and the setting of a deadline, the customer shall only be entitled to provide remedy himself in urgent cases if the customer or third parties threaten to incur disproportionately

high damage. In any case, the customer will inform the contractor without delay about his own performance of the fault/defect remedy.

- 10.8. In the framework of liability for defects of title, the contractor shall assume responsibility, in particular, that the rights of third parties are neither infringed by the deliveries / services nor by their contractual use by the customer. If claims are asserted against the customer by a third party due to a defect of title, the contractor shall exempt the customer on first written demand from all claims including court fees and lawyer's charges, which the customer necessarily incurs in the context of the claim raised by the third party unless the contractor is not responsible for the defect of title. Where the contractor does not remove defects of title within an appropriate period of time, the customer – aside from his legal rights – shall be entitled to acquire the approval for use of the respective delivery objects and services and / or the necessary or purposeful license from the respective holder of such rights at the expense of the contractor.

## 11. INSURANCES / MINIMUM WAGE

### 11.1.

Over the duration of the contractual relationship including the guarantee and warranty period, the contractor shall maintain (business) liability insurance cover with a coverage amount of at least €3 million and to provide evidence thereof to the customer on request.

- 11.2. The contractor ensures that he as well as all companies or temporary employment agencies subcontracted by him in connection with the services performed for the customer will meet and adhere to the obligations of the minimum wage act. The customer exempts the contractor from all third-party claims arising from the contractor's breach against the minimum wage act. This also applies to any subcontractors or temporary employment agencies commissioned by the contractor. In order to ensure that the active subcontractor or temporary employment company is indeed adhering to the minimum wage act, the customer is authorised to conduct an audit through an independent public accountant who has a professional obligation to confidentiality. The contractor must cooperate with this audit and must provide the public accountant with all required documents and information.

## 12. CONFIDENTIALITY

- 12.1. The contractor shall be under obligation to treat any commercial and technical information of the customer, which is not accessible anyway to the general public and which comes to his knowledge in the framework of the business relationship with the customer, as business secrets, not make it accessible to third parties, and use such information only for the purpose of executing the respective purchase order. The contractor shall impose a corresponding obligation on all employees of the contractor, his subcontractors and their employees. Proprietary rights as well as any industrial property rights regarding information of the customer shall remain with the customer.
- 12.2. Without prior written approval from the customer, the contractor shall not be entitled to use information on an intended or existing cooperation with the customer for purposes of reference or marketing.

## 13. EXTRAORDINARY TERMINATION

The customer and the contractor shall be entitled to give extraordinary termination of contracts without having to comply with notice periods if the respective other party (i) ceases its payments or if (ii) an application for insolvency proceedings is filed or (iii) opened against its assets or (iv) not opened for lack of sufficient assets or if (v) the other party infringes the Directives (EC) no. 2580/2001 or 881/2002 or corresponding international or national rules and standards regarding counterterrorism. Further reasons justifying extraordinary termination shall remain unaffected.

## 14. CESSIONS / SETOFF

- 14.1. Cessions of the contractor outside the area of application of § 354a HGB (German Commercial Code) shall be ruled out unless the customer provides his written approval.
- 14.2. The customer shall also be entitled to redeem payment claims through offsetting against due receivables, to which a company affiliated to the group of companies of the customer within the meaning of §§ 15 et sequentes AktG (German Stock Corporation Act) is entitled. On request, the customer will make the respective current list of these companies available to the contractor.

## 15. PLACE OF EXECUTION / PLACE OF JURISDICTION / APPLICABLE LAW / SEVERABILITY CLAUSE

- 15.1. Unless explicitly agreed otherwise, the place of execution shall be the place of delivery or performance indicated in the purchase order.
- 15.2. The exclusive place of jurisdiction shall be the registered office of the customer.
- 15.3. The legal relationships between the customer and the contractor shall be subject exclusively to the law of the Federal Republic of Germany to the exclusion of the reference provisions governing international private law. The application of the United Nations Convention on Contracts for the International Sales of Goods (CISG) shall be ruled out.
- 15.4. Should a provision of these General Conditions of Purchase or the purchase order be or become inexecutable and / or ineffective, this shall not affect the effectiveness of the other provisions of these General Conditions of Purchase or the purchase order. Instead of the inexecutable and / or ineffective provision, an executable and / or effective provision shall be considered as agreed between the parties, which comes as close as possible to the intended commercial purpose. This shall also apply to possible regulatory omissions in these General Conditions of Purchase or the purchase order.